

KEITH R. KUMMERFELD

IBLA 82-1239

Decided April 4, 1983

Appeal from decision of the California Desert District Office, Bureau of Land Management, denying a mine plan of operations for mining claims CAMC 105410 and 105411.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness-- Mining Claims:
Generally

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management denies a mine plan of operations for mining claims located in a wilderness study area on the basis that the proposed open pit operation would impair the naturalness of the study area, the denial will be upheld where the mining claimant fails to establish error in the determination.

APPEARANCES: Keith R. Kummerfeld, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Keith R. Kummerfeld has appealed from a July 14, 1982, decision of the California Desert District Office, Bureau of Land Management (BLM), Riverside, California, denying Kummerfeld's mine plan of operations for mining claims CAMC105410 and 105411.

On April 12, 1982, Kummerfeld filed a mine plan of operations relating to two mining claims located in January 1982 in the Rodman Mountains in sec. 27, T. 7 N., R. 4 E., San Bernardino meridian. The plan of operations called for the use of dozer rippers and loaders for open pit mining, the creation of underground workings, and the use of a backhoe and auger drill for prospecting. The area proposed to be affected by the operation was 40 acres.

By letter dated May 5, 1982, BLM informed Kummerfeld that his proposed operation embraced lands included in a wilderness study area (WSA). BLM stated further:

WSA's are, by definition, areas of substantial public concern. As provided for in 43 CFR 3802.3-1c, if the authorized officer determines that there is substantial public interest in the proposed mining operation, the operator may be notified that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in part 3802.1-4.

We, therefore, wish to inform you of this additional delay. The public comment period will begin on June 1, 1982 and end on July 1, 1982. You can expect our final approval or modification by July 12, 1982.

Subsequently, BLM had the following notice published in a local newspaper:

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau of Land Management -- Notice of plan of operation (43 CFR 3802) 32 miles southeast of Barstow, California. Keith Kummerfeld (of Kummerfeld Mines Company) has filed a plan of operations to mine in the Rodman Mountains along the east side of Box Canyon Road. The proposed site is located in Section 27 of T. 7 N., R. 4 E. (S.B.M.). The proposal is for heavy equipment to remove the surface material and ore to an unknown depth. After bedrock is encountered the operator intends to mine underground to an undetermined depth. An access road of approximately 200 feet in length will be constructed. The total surface disturbance could be up to 40 acres. The mill site location has not been determined. The proposed impacts are in a Wilderness Study Area of the California Desert Conservation Area. Public comment is therefore invited to identify any possible conflicts with sensitive resources. A copy of the plan of operations and environmental assessment report are available for public reviewing * * *.

On July 14, 1982, BLM issued its decision denying Kummerfeld's plan of operations. It stated that the activity so proposed would impair the naturalness of the study areas. ^{1/} However, BLM further stated that "[y]ou

^{1/} In a May 4, 1983, memorandum from BLM wilderness personnel to BLM mineral personnel, it was stated:

"The activity that Mr. Kummerfeld is proposing will not meet the non-impairment criteria of the Interim Management Policy. An open pit mine of the magnitude proposed will be noticeable in the WSA from much of the higher elevations. It will pose such a contrast to the characteristic environment that it will negatively impact wilderness 2(c) values, and as such constrain the Secretary of the Interior's recommendation as to the area's suitability, as wilderness. However, if Mr. Kummerfeld wishes to only prospect with the drill methods proposed, the non-impairment criteria may be met. The open pit mining and underground workings should be denied based on the fact that they will not meet the non-impairment criteria mentioned earlier. The prospecting should be granted if the following stipulations are followed.
* * *.

have our approval to prospect by drilling and using hand tools subject to the following stipulations * * *. " BLM listed six stipulations.

[1] The Secretary of the Interior is directed by section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), to review those roadless areas of 5,000 acres or more identified during the inventory of the public lands as having wilderness characteristics and to make a recommendation to the President regarding the suitability or nonsuitability of each such area for preservation as wilderness. Specific guidance with respect to management of those identified lands pending completion of the review and action by Congress in response to the recommendations is provided by section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1976), which states in pertinent part:

During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: Provided, That, in managing the public lands, the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 1714 of this title for reasons other than preservation of their wilderness character.

[2/]

The regulations establishing procedures to prevent the impairment of the suitability of lands under wilderness review and to prevent unnecessary or undue degradation by activities authorized under the mining laws are found in 43 CFR Subpart 3802.

On appeal appellant asserts that the claims in question are located for strategic minerals that appear to be commercially recoverable. He contends that the area in question should not be "wilderness." He lists a number of impacts, i.e., roads, powerlines, and old mine workings, and states that the "area is not wilderness by definition." He also cites the need for development of strategic minerals.

None of appellant's arguments are directed to the basis for BLM's decision. Appellant ignores the fact that the Secretary is required by law to regulate mining operations in WSA's to prevent impairment of the suitability of such areas for inclusion in the wilderness system.

2/ The record indicates that the two claims in question, the RODPL-1 (CA MC 105410) and the RODPL-2 (CA MC 105411) were both located subsequent to the WSA designation.

The question of whether the Rodman Mountain area has the requisite wilderness characteristics to be included in the study phase of wilderness review was settled at the time BLM designated the area a WSA. ^{3/} That determination is no longer subject to challenge. Questions concerning the potential for mineral exploration of this land will be addressed by BLM during the study phase of wilderness review. In Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981), the Board explained:

During this study phase, BLM would endeavor to analyze each WSA's suitability for wilderness designation in conjunction with the whole range of other public land uses that Congress has authorized. Thus, the mineral potential of any tract would be examined in the study phase to determine the impact that a permanent wilderness designation might have on such values. Moreover, this analysis is not limited to only mineral values, but embraces the full range of public uses, including grazing and recreational use, with an aim to determining the relative merits of a specific parcel's inclusion in the wilderness system. Indeed, the entire purpose of the study phase is the generation of data sufficient to make informed choices between competing claims to the land.

Id. at 170.

Appellant has failed to establish any error in BLM's decision denying his mine plan of operations, and limiting his prospecting to drilling and use of hand tools.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge.

^{3/} The wilderness review undertaken by BLM pursuant to section 603(a) of FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. Investigation into whether areas contained wilderness characteristics was undertaken during the inventory phase. The BLM decision to designate a unit as a WSA marked the end of the inventory phase and the beginning of the study phase.

